

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 19, 2008

No. 07-50971
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JUAN HECTOR GUEVARA, II

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:07-CR-73-ALL

Before GARZA, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Juan Hector Guevara, II appeals the sentence imposed following his guilty plea conviction of possession with intent to distribute less than 50 kilograms of marijuana. Guevara argues that the district court erred in denying him an adjustment under U.S.S.G. § 3E1.1 for acceptance of responsibility.

The district court denied the downward adjustment due to Guevara's use of drugs while on pretrial release. The district court determined that Guevara's drug use was not excused by the fact that a tornado had struck and damaged the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

home where Guevara was staying. The district court's determination that Guevara's drug use was inconsistent with the acceptance of responsibility is not without foundation. See *United States v. Juarez-Duarte*, 513 F.3d 204, 211 (5th Cir.), cert. denied, 128 S. Ct. 2452 (2008); *United States v. Watkins*, 911 F.2d 983, 984-85 (5th Cir. 1990).

AFFIRMED.